

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONALD PATTERSON,

Plaintiff,

v.

Case No. 13-12895
HON. TERRENCE G. BERG

DETROIT EDISON, et al.,

Defendants.

**ORDER DENYING PLAINTIFF'S MOTION TO REMAND (DKT. 13) AND
GRANTING DEFENDANTS' MOTION TO DISMISS (DKT. 14)**

Before the Court are Defendants' Motion to Dismiss the Amended Complaint and Plaintiff's Motion to Remand to State Court. For the reasons explained below, Defendants' Motion to Dismiss will be granted, and Plaintiff's Motion to Remand will be denied.

This lawsuit was brought by Plaintiff Donald Patterson against Defendants Detroit Edison and DTE Energy Corporate Services, LLC (collectively "DTE"), Patterson's former employer. Patterson's original Complaint alleged that DTE breached his employment contract, and that Utility Workers Union of America Local 223 ("the Union"), breached its duty of fair representation, when DTE discriminated against him on the basis of race by not "benchmarking" his position to a permanent pay grade, and the Union did not process his grievance against DTE. Plaintiff also alleged that this conduct violated Michigan's Elliott-Larsen Civil Rights Act ("ELCRA").

On March 17, 2014, the Court entered an Order (Dkt. 10) granting Defendants partial judgment on the pleadings. While most of Plaintiff's claims were dismissed with prejudice, Plaintiff's claim under the ELCRA was dismissed without prejudice and the Court allowed Plaintiff 30 days in which to file an amended complaint containing factual allegations sufficient to show that some discriminatory act occurred within the three-year statute of limitations period preceding the lawsuit. Specifically, in order to maintain his suit, Plaintiff needed to allege that a discriminatory act occurred sometime between May 6, 2010, and May 6, 2013, the date the complaint was filed.

On April 16, 2014, Plaintiff filed an Amended Complaint (Dkt. 12). The same day, Plaintiff also filed a Motion to Remand (Dkt. 13). On April 28, 2014, Defendants filed a Motion to Dismiss the Amended Complaint (Dkt. 14). Plaintiff made no response to the motion to dismiss, and the time to do so has long since passed.

Although a hearing was initially scheduled for June 23, 2014, the Court has concluded that oral argument would not be beneficial to the resolution of either of the pending motions. Accordingly, both motions will be decided solely on the basis of the parties' written submissions. *See* E.D. Mich. LR 7.1(f).

Plaintiff's Motion to Remand contains no legal support for its argument that the Court should not exercise supplemental jurisdiction over Plaintiff's ELCRA claim. Thus, Plaintiff's Motion to Remand (Dkt. 13) is **DENIED**.

As to Defendants' Motion to Dismiss the Amended Complaint, the Court has carefully reviewed the Amended Complaint to determine whether it contains allegations sufficient to set forth a plausible entitlement to relief. As stated previously, the Court's March 17, 2014 Order allowed Plaintiff 30 days in which to file an amended complaint addressing the initial complaint's deficiency. The Court's Order further stated that the failure to properly amend the complaint would result in the automatic conversion of the Court's dismissal of Plaintiff's ELCRA claim from one without prejudice to one with prejudice. While Plaintiff did timely file an amended complaint, the amendments do not allege the commission of any act of discrimination within the three-year statute of limitations period. Although Plaintiff alleges that he learned in July 2011 that he had been discriminated against at some time in the past, he does not allege any specific date between May 2010 and May 2013 when an act of discrimination occurred. The amendments to the complaint are therefore insufficient. Accordingly, Plaintiff's ELCRA claim is hereby **DISMISSED WITH PREJUDICE**, and Defendants' Motion to Dismiss (Dkt. 14) is **GRANTED**.

This is a final order resolving all claims against the remaining defendants.

SO ORDERED.

Dated: June 23, 2014

s/Terrence G. Berg
TERRENCE G. BERG
UNITED STATES DISTRICT JUDGE

Certificate of Service

I hereby certify that this Order was electronically submitted on June 23, 2014, using the CM/ECF system, which will send notification to the parties.

s/A. Chubb

Case Manager